IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1439 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIKHABHAI KHUSHALBHAI PADHIAR & 6 - Petitioner(s)
Versus
BACHUBHAI AMBALAL GOHIL - Respondent(s)

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Appearance :
MR NILESH A PANDYA for Petitioner(s) : 1 - 2.
MR HJ NANAVATI for Respondent(s) : 1,
MR KG PANDIT for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 12/03/2007

COMMON ORAL JUDGMENT

1. Bhikhabhai Khushalbhai Padhiar and six others have filed this petition under Article 227 of the Constitution of India with a prayer that this Court

may quash and set aside the order dated 30th Dec.2004 passed by the 2nd Jt.District Judge, Vadodara in Misc.Civil Appeal No.71 of 2003.

2. This petition was filed on 13.1.2005. When the matter was placed for hearing, this Court on 4.2.2005 issued Rule and granted ad-interim relief.

3. I have heard Mr.Nilesh Pandya, learned advocate for the petitioner and also Mr.Pandit, learned advocate on behalf of respondents. With the consent of the parties, the matter is taken up for final disposal today. In the meanwhile, the respondents have also filed Civil Application No.3305 of 2007 for vacating the interim relief.

4. The relevant facts giving rise to filing of this petition are as under:

4.1 The respondent herein has filed Regular Civil Suit No.939 of 2002 in the Court of Civil Judge (JD),Vadodara for declaration and permanent injunction against the present petitioners restraining them from entering into their property. Along with the said suit, the respondent had also filed an application under Order 39 Rule 1 and 2 of Code of Civil Procedure by way of Exh.5 and prayed for interim injunction. The trial Court has initially granted ex-parte injunction against the petitioners and issued the notice to the petitioners.

4.2 The petitioners appeared in the said suit and

filed their reply at Exh.13 and denied all contentions raised in the said suit and contended that the said land runs in the joint occupation and possession of the rival parties since long and the petitioners were cultivating the land and also having mortgage deed as well as the Will which also showed their ownership and possession over the suit land. The petitioners have also contended that the suit land has been given to the petitioners by Mr.Babarsinh by executing registered Will and accordingly, the petitioners were holding the possession of the suit land. The petitioners have produced numbers of documents to support their case. The documents produced on record and various affidavits were filed of the independent persons and the panchnama drawn by the Court Commissioner, clearly suggested that the land in question was in the joint possession of both the parties and both the parties were holding the possession since 1966 onwards and the respondents have not objected for the same and by virtue of Will, the petitioners have obtained the possession and considering this aspect, the trial Court has rejected the application Exh.5 on merits of the case.

4.3 It is the case that however, after considering the facts and evidence of the case, the appellate Court allowed the said Misc.Civil Appeal and quashed and set aside the order.

5. I have heard the learned advocates appearing for the respective parties. With the consent of the parties, the following order is passed which will meet

the ends of justice.

(i) The impugned order 30th Dec.2004 passed by the 2nd Jt.Dist.Judge, Vadodara in Misc.Civil Appeal No.71 of 2003 is quashed and set aside. The learned trial Judge is requested to hear and decide the proceedings of Regular Civil Suit No. 939 of 2002 after allowing both the parties to lead oral as well as documentary evidence on record and to dispose of the matter by 31st July 2007 without being influenced the order passed by this Court. It is needless to say that the parties shall cooperate in disposal of the matter at the earliest. The Registry is directed o send the writ of this order forthwith. It will be open for the learned advocate for the petitioners to send the order by Fax to the concerned Court.

In the result, the petition is allowed to the above extent. Rule is made absolute to the aforesaid extent. However, interim relief shall continue till 31st July 2007. No order as to costs.

6. In view of the order passed in the main matter, no orders are required to be passed in the Civil Application.

(K.M.Mehta, J.)

Sreeram.